1943.

File No. B.R.T.A. Bel/43

Legal-**DEPARTMENT**

A-**BRANCH**.

Subject:—

Appeals to the Bombay Revenue Tribunal from Belgaum District.

P-9:E

" True copy - Original papers being of bad quality - Destroyed".

K.K. Velankar

Superintendent,
D Branch, Legal Department.

File No. B.R.T.A. Bel./43

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Bombay Revenue Tribunal Appeal.

Chronological Statement of Facts.

This is an appeal preferred by the wife and two minor sons of one Mr. Venkaji Rango Despande of Kalbhavi, taluka Sampgaon, district Belgaum, to the Bombay Revenue Tribunal, against the order of the Collector of Belgaum No. R.R.C.S.R. 1899, dated the 5th June 1942, praying that Government can claim only 1/12 share in the joint family property of Mr. V.R. Despande, and not 1/3rd as claimed by the Government. This appeal arose as a result of recovery proceedings instituted by the Government against said Deshpande of Kalbhavi, regarding toll bar dues. Mr. V.R. Deshpande and Mr. B.S. Ganachari of Mugatkhan Hubli had jointly farmed the Kenchalarkop toll-bar for ~~1935-36 for~~ 1935-36 Mr. V.R. Deshpande had alone farmed the Nagarmanoli toll bar for 1932-33 and 1933-34. Mr.B.S. Gunachari had also farmed the Hirekodi toll bar for the year 1930-31 and Mr. Despande was surety for the same. It was however found that Mr. Ganachari had no immovable property to be sold for the recovery of the dues in respect of Kenchalarkop toll bar, and hence his partner Mr. Deshpande was proceeded against and S.No. 52, of Kalbhavi standing in the name of Mr. V.R. Despande was put to sale by sale proclamation No. R.R.C. 87/94 of 16-6-1936. The property was sold on 15-8-1936, and was confirmed on 22-9-1936. It was however found that Mr. V.R.Despande was still in arrears in respect of Kenchalarkop and Nagarmanoli to the extent of Rs. 3026-5-0 and S.Nos. $\frac{3}{1}$, $\frac{4}{1}$, $\frac{10}{2}$, $\frac{10}{5}$, $\frac{10}{9}$, $\frac{10}{11}$, $\frac{10}{14}$, $\frac{166}{2}$, $\frac{3}{6B}$, $\frac{44}{2}$, and 128, belonging to the defaulter were put to sale by proclamation No. R.R.C.S.R. 87 and 94 dated 14-9-37 and as no bids were secured secured the lands were purchased by the Government on 10-11-1937 for a nominal bid of rupee one. On 4-12-1937 one Mr. R.H. Despande of Dharwar put in an application to the Prant Officer stating that the property in question belonged to

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to the joint family of which the defaulter Mr. V.R. Despande was the manager and requested that the defaulter was entitled to only 1/3rd share in the property. Thereupon enquiries were made regarding the contention and finding that there was no evidence in his favour the Prant Officer, Belgaum overruled the objection and confirmed the sale by his order No. R.R.C.S.R. 729, dated 15-5-1939. p. 322 IV

On 2-8-1939, he appealed to the Collector of Belgaum against the order of the Prant Officer, Belgaum, above referred to. pp.399/403 IV The opinion of the D.G.P. Belgaum was taken who was of the opinion that there was no evidence that the family was joint. p. 425 IV But if it was so proved then, the debt being Avyaharika, the shares of others will not be liable. Further enquiries were made and after going through all the documents of the case the Mamlatdar of Bail-Hongal came to the conclusion that the family may be joint. p.441 IV This being so he suggested that only the right, title and interest of said V.R. Deshpande, to 1/3rd share in the lands may be resold after setting aside the previous sales in realisation of the Nagarmanoli toll bar dues for 1932-33, 1933-34 and Kenchalarkop toll bar dues for 1935-36. pp. 524-528 IV

On 18-11-1940 The Collector of Belgaum on the strength of all the evidence produced as also the enquiries made, set aside the previous sales confirmed by the Prant Officer on 22-9-1936 and 15-5-1939 and directed the Prant Officer to proceed against the defaulter's share in the joint family property. pp. 530-31 IV The sale proclamation of the 1/3rd share of the joint family property was issued on 8-12-1940 and the property was purchased by the Government for a nominal bid of Re. 1/- only as there were no bidders and the sale was confirmed on 25-2-1941. p.565 IV p. 566 IV

Mr. V.R. Deshpande was also a surety to Mr. Ganachari who had farmed the local fund toll bar of Hirekodi for the year 1930-31 for Rs. 4105/- The President of the D.L.B. reported on 25-9-36 that the whole sum had been recovered from Mr. Gunachari but p. 1 file II

but final interest of Rs. 352-2-6 on the amount was due from him, and requested the Government to take action to recover the amount. The Mamlatdar of Bail Hongal on 19-12-1936 that as there was no moveable or immovable property, belonging to Mr. Gunachari, the sum of Rs. 352-2-6 will have to be recovered from his surety Mr. V.R. Deshpande. In view of the fact that the property of Mr. V.R. Deshpande was found to be joint family property the right title and interest only of 1/3rd share in S. Nos. 31/3, 95, 96/1, 9/2, 22, 54/1, 54/4, 42/2 were proclaimed for sale on 4-12-40and was sold on 19-2-41 to the D.L.B. for Rs. 433-5-4. and the sale was confirmed on 24-4-1941.

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On 10-3-1941, the wife of the defaulter applied to the D.D.C, requesting on behalf of her two minor sons that the sales should not be confirmed as she and the minor sons had a share in the joint family property belonging to the defaulter and only 1/12th share of the joint family property belonging to the defaulter should be sold, and not 1/3rd. Both the requests were rejected by the D.D. C., on 24-4-1941.

pp. 572-75 IV

p. 584 IV

On 7-7-1941, Mrs. Despande appealed to the Collector against the order of the D.D.C. and on 5-6-1942, the Collector rejected the appeal.

pp.592-93 IV

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It is against this order of the Collector that the present appeal has been preferred to the Commissioner, S.D. which has been treated as an appeal to the Bombay Revenue Tribunal.

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Memorandum of Instructions.

1. One Venkajirao Deshpande had, in partnership with one B.S. Ganachari, farmed the Kencharkop toll-bar for 1935-36. Venkajirao had alone farmed the Nagarmonoli toll bar for 1932-33 and 1933-34. The toll bar dues remained in arrears, and S.No 52 of Kalbhari was sold by auction and purchased by Government for a nominal price of Rs. 1/- as there were no biders and the sale was confirmed on 22-9-1936;. Other lands standing in the name of Venkajirao were put up for sale for recovery of the arrears, and were purchased by Government.

One R.H. Deshpande applied stating that the property inquestion belonged to a Hindu joint family of which Venkatrao was manager, and that only a third share therein, which Venkatrao, held therein, should be proceeded against.

On 18th November 1940 the Collector set aside the orders of the Prant Officers confirming the above-said sales, and directed the Prant Officer to proceed immediately against the defaulter's share of the joint family property.

Accordingly, the defaulter's 1/3rd share in the property specified in the notification at page 538 of file was proclaimed again for sale, and as there was no bid, it was purchased by Government for nominal price of Re.1/- and the sale was confirmed on 23-2-1941 (File IV p. 566) by the D.D.C.

The present appellants thereafter applied to the District Deputy Collector urging that the defaulter has only 1/12th share in the property, but on 24-4-1941 the application was rejected : File IV p. 584. An appeal to the Collector was also rejected on 5-6-1942: File V page 9. Hence the present appeal.

2. The appellant's

2. The appellant's contention is that the defaulter Venjaji holds only 1/12th share in the joint family property and that this interest alone can be reached by the sale proceedings. Venkaji is said to have 1/12th interest in the property on the ground that his wife, the appellant Chandrabai, and his two minor sons, have each an interest therein equal to his own.

3. The facts are not quite clear but it appears fairly plain that the property belongs to a joint family of which Venkaji was manager: alsc the Collector's order of 18-11-1940, seems to proceed upon the further assumption that the business in the conduct whereof the debt was incurred was not a joint famaly business so as to bind the other coparceners.

4. The first question for consideration is the extent of the interest which each of the appellants holds in the property. Chandrabai, herself has no present interest in the property which belongs to the coparceners, although it may be that if there were a partition between her husband and sons she would be entitled to a share: Mulla, Hindu Law p. 384. The sons, however, have an undivided coparcenary interest in the property: Mulla op. cit, pp.233-234.

5. The second question is whether the sale proceedings can affect the interest of the minor appellants in the property. i.e the sons. The sale was of the right title, and interest of Venkaji and operated effectively to convey the entire interest over which Venkaji had disposing powers. The sons are under a pious duty to pay their father's debts and the duty arises even during the lifetime of the father and the sale would convey their interest as well in the property, unless the debt in respect of which the sale was held was taken for illegal or immoral purposes; See Mulla, op. cit pp. 343 et seq. The burden of proving that the debt was taken for such a purpose or is otherwise tainted with immorality so as to exclude the pious obligation which the law imposes, lies upon the appellants. The debt in this case does not appear to be one which can be

which can be said to be of the kind mentioned. The debt is due, not as unpaid tolls within the meaning of para. 298(7) of Mulla's Hindu Law as erroneously suggested by the District Government Pleader, Belgaum, but upon a contract. The tolls were recovered and appropriated by the contractors, and their liability to Government is in respect of the amount stipulated in the contract. The appellants ~~x~~ urge that Venkaji was only a surety: this is not so, he was one of the two persons who had jointly taken the contract. Even on the assumption that he was merely a surety, his liabilty is coextensive with that of the principal: section 128 of the Indian Contract Act, 1872; and the debt, even on such assumption would not be avyavaharika. By virtue of section 187 of the Bombay Land Revenue Code, 1879, the debt could be lawfully enforced, as it was enforced, by proceedings under Chapter XI Bombay Land Revenue Code, 1879, and such a sale has the same effect as a sale in execution of a decree by a Civil Court. See Mulgund Cooperative Society vs Shidlingappa 41 Bom. L.R.807 Hanmantgowda vs Shivappa 42 Bom L.R. 1123

6. For these reasons it should be urged that the appeal should be dismissed.

7. The Revenue Deptt. is being requested to ~~x~~ forward to the A.G.P. copies of the following documents/ ~~circular~~ in additin to those specified in that department circular:-

(1) Collector's order of 18-11-1940.

(2) Sale proclamation at p. ~~6538~~ of file IV together with Eng. translations.

Appeal against order No.R.R.C.S.R.1899, dated 5th June 1942, of the Collector of Belgaum.

No.O.-148 of 1943.
Poona, 7th July 1943.

Read:

Appeal petition, dated 1st September 1942, of Narayan and Shriniwas Venkatrao Deshpande, minors, and their mother Mrs.Chandrabai Venkatrao Deshpande.

Opinion, dated 7th July 1943, of the Commissioner, S.D., and Member, Bombay Revenue Tribunal.

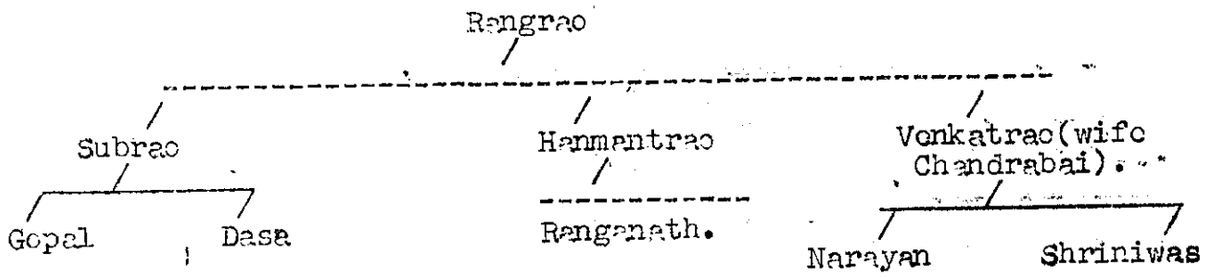
Opinion, dated 7th July 1943, of Dewan Bahadur P.B. Shingne, Non-official Member, Bombay Revenue Tribunal.

Opinion, dated 7th July 1943, of Sir Govind Madgavkar, President, Bombay Revenue Tribunal.

O R D E R.

This is an appeal by the minors Narayan and Shriniwas, sons of Venkatrao Rangrao Deshpande of Kalbhavi, by their guardian mother Chandrabai, against order No.R.R.C.S.R.1899, dated the 5th June 1942, of the Collector of Belgaum, declining to set aside the sale of their alleged interest in certain ancestral lands.

2. The genealogy of the appellants' family is as follows:-



The appellants' father Venkatrao, together with a stranger, Mr.V.S.Ganachari of Mugutkhan Hubli, bought at an open auction the right to collect tolls for Nagarmanoli and Kenchlarkop. They were in default to Government to the extent of nearly Rs.3,000/-. S.Nos.52, 3/1, 4/1, 10/2, 10/5, 10/9, 10/11, 10/14, 34/2, 128, 166, 166/2 and 3/6-B of Kalbhavi belonging to the appellants' father, Venkatrao, were, therefore, sold on the 30th May 1936, 15th July 1937 and 25th October 1937 and in the absence of bidders were purchased by Government for nominal amounts of Re.1/-. Subsequently, Subrao, the brother, and Ranganath, the nephew of Venkatrao, obtained a release of their share in the property on the ground that it was ancestral property which had been inherited from the common ancestor Rangrao and that Venkatrao had only 1/3rd share therein. Subsequently, the present application was filed by the minor sons Narayan and Shriniwas and by their mother Chandrabai on the allegation that Venkatrao had only a 1/12th or at the most a 1/9th share in the property, the two minor sons having the same interest in the land under the Hindu Law. Their application was rejected by the Collector. Hence the present appeal.

3. Notice was issued to Government. Mr.V.H.Mutalik Desai of the Belgaum Bar appears for the appellant. Mr.S.G.Patwardhan appears

appears for Government. It is argued for the appellant that the business was not ancestral and that following the decision of Their Lordships of the Privy Council in Benaras Bank v. Hari Narayan, 34 Bom.L.R.1079, followed in Malkarjun v. Sarubai, 45 Bom.L.R.259, the 2/9th share of the minor appellants is not liable for the debt due to Government. For Government it is contended, firstly, that it is not proved upon the record that the business was not ancestral and, secondly, that the minor appellants are under a pious obligation to pay the debt of the father, which is not tainted with immorality. As with the numerous cases of the kind reported in the Indian Law Reports, the question is not entirely free from doubt. On the record, as it stands, there is no evidence that the business was a joint family business or an ancestral business. A bid for a toll farm must have been an uncertain speculation. In the present case it is clear that the appellants' father took not his relations, such as his brothers or their sons, who are majors, but a stranger as a partner. There is no evidence that the business was ancestral or of the joint family. Under these circumstances it must be held on the question of fact that the business was neither ancestral nor joint family business and that there can be no presumption to that effect. Similarly, that the minor appellants have each a 1/9th share admits of no doubt; in fact, it follows from the success of the brother and the nephew of Venkatrao in obtaining the release of their share in the lands. The only point on which the minors' share could be attached is their pious obligation. It is to be noted that the proclamation of sale only sells the right, title and interest of Venkatrao or what he could, in law, have himself sold. In the Privy Council decision Benaras Bank v. Hari Narayan, 34 Bom.L.R.1079, referred to above, the question related to a contract with the Public Works Department taken by the father in respect of which he had borrowed money from the plaintiff Bank. It was held by Their Lordships of the Privy Council that the share of the minor sons was not liable for this debt though it was liable in respect of other amounts borrowed by him to pay off ancestral debts. This decision was followed by Divetia J. in Malkarjun v. Sarubai, 45 Bom.L.R.259, in which he held that "... the Manager of a Hindu family has no authority to impose upon a minor member the risk and liability of a new business started by him and that it made no difference whether the Manager was the father of the minor." In the present case, particularly in view of the fact that the sons are minors, we are of opinion that the law is, on the whole, in favour of the minors and against their liability for the amount due to Government from their father. We, therefore, allow the appeal, set aside the order of the Collector, appealed against, and order that right, title and interest in respect of 1/9th share of Venkatrao alone has been sold and has passed to Government and not the 1/9th right, title and interest of each of the minors. In regard to the appellants' mother Chandrabai, her husband is alive, there is no partition and she has no share in the property and her appeal fails.

G. D. Madgavkar,
President,
Bombay Revenue Tribunal.

V. S. Bhide,
Commissioner, S.D., and
Member, Bombay Revenue Tribunal

P. B. Shingne,

Non-official Member,
Bombay Revenue Tribunal.

B.R.T

Bombay Revenue Tribunal Appeal (Belgaum).

Chronological Statement of Facts.

This relates to an appeal to the Bombay Revenue Tribunal preferred by Rao Sardar Chandrappa Basawantrao Desai of Tallur, taluka Parasgad, District Belgaum against the order of the Collector of Belgaum, dated 21st July 1941 rejecting his appeal against the Prant Officer's Order, dated 28th September 1940 holding that the Japti sanadi lands S. No.319 and 320 are kadim and not jadid as contended by the appellant.

pp. 1-7 of case pps.

pp. 59-60 File II

pp. 3-10 file I

2. The appellant is inamdar of the village of Tallur. The sanadi holding is shown at S. No. 2195 on page 458-459 of the printed Land Allienation Register (1890-91) in respect of Parasgad Taluka. It ~~is~~ was ~~be~~ granted to the forefathers of one Ninganaik. It was held by the branch of Anandnaik (first son on Ninganaik) till 1933 when his great grand-duathter-in-law, Dyamawwa, died in estate and without known heirs. On her death, the appellant began to recover rent from the tenants of the S.Nos.

100 of the File I.

Geneology of p. 83 of file I

3. On the application of one Kubendra Balabha Puljari on 11-11-38 an inquiry was made in the matter. In the meanwhile on 19th December 1938 one Tayavva Kom Bhimappa applied stating that she was the legal heir of the deceased Dyamawwa and requesting that the lands should be restored to her,

p. 1A of file I.

p. 35 of file I.

4. On 28-9-40 the Prant Officer after hearing both the parties rejected the claim of Tayavva to the two S. Nos. and directed that the holding being kadim inam the appellant should refund the profits realised by him.

pp. 3-10 -do-

5. On 2-12-40, the appellant preferred an appeal to the Collector against the above order, but the latter dismissed it on 21-7-41. Against this Order of the Collector, the appellant has now filed an appeal to the Bombay Revenue Tribunal.

pp. 59-60 file II.

Memorandum of Instructions.

1. The appellant contends that the assigned sanadi is a jadid inam, i.e. an inam granted by the inamdar after the village itself was granted in inam to him. The contention therefore involves the following allegations of fact, the burden of proof whereof rests on the appellant: (1) that the holding had not been assigned at the time when the inam was granted, (2) that the inam included the holding in question, and (3) that the holding was subsequently granted by the inamdar on service tenure. There is no evidence, however, directly bearing on any of these points.

2. The appellant relies on (1) the statement made by his ancestor Chandrappa before the Inam Commissioner, 1851, and (2) the Jamabandi Chitta of the village for 1866. In the former the holding is claimed as jadid holding. It is a self-serving statement which is not admissible in evidence under section 21 or 32 of the Evidence Act, 1872. It is doubtful whether it can be admitted under section 33 for, in the first instance, that section only applies to evidence "which would not include statements other than those which a Court permits or requires to be made before it, (Section 3), and it is doubtful if the Inam Commissioner in 1851 can be deemed to be a Court; and Secondly, as the inquiry does not seem to have been pursued, it is not clear that Government had had an opportunity to cross-examine the deponent so as to satisfy proviso 2 to section 33. In any event, it is clear that such a self-serving statement can have little probative value: See Woodroffe & Amear Ali on Evidence, 9th edn. 264. And such little value as it might otherwise have had is negatived by the obvious fact that the deponent could have had no personal knowledge of the matter. The second document, likewise is no substitute for direct evidence on the matter now in controversy, because the person who made the entries could not have had personal

[* The commissioner's inference that the inam commissioner's decision appears to rest on the fact that sanadi holdings were treated as kadim; but the inference appears inconsistent with art 30 of Joshi's Manual and the D.D.C. says the sanad was given in form 14]

personal knowledge of the matter. The document moreover is contradicted by the evidence of contemporaneous practice: See para. 8 of the District Deputy Collector's order. Apart from the scanty probative value of these two pieces of evidence, their admissibility itself is vulnerable because they go behind the settlement sanad and militate against the finality after settlement sanad. The sanad of 1884 is indeed determinative of the Inamdar's rights and no Documents prior to the sanad such as the statement of 1851 or the chitha of 1866 can at all shake what the sanad determines.

3. The appellant refers to the fact that Government has conceded that certain service assignments in here were jadid: that however does not help him. Each case must depend upon its own facts and evidence. Nor can the circumstance that one lapsed sanadi holding in this village was given to the inamdar in 1865 by the Collector on certain conditions support of his case: that was evidently an act of grace and can create no right.

4. The appellant cannot succeed unless he proves that the holding is included in the inam granted or continued to him by the British Government. It is futile for him to prove (though, as pointed out above, he has adduced no evidence on this point) that it was included in the initial grant of a former ruler. For "when a territory is acquired by a sovereign state for the first time that is an act of State. It matters not how the acquisition has been brought about. Any inhabitant of the territory can only make good in the Municipal Courts established by the new sovereign such rights as that sovereigh has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing." Vajesinghji v. Secretary of State I.L.R. 48 Bom. 613 P.C. at pp. 616-617. The only legally enforceable rights which the appellant has as against the new sovereign are those, and only those, which that new sovereign, by agreement express or implied or by legislation chose to confer upon him: See Secy. of State v. Bai Rajbai I.L.R. 39 [illegible] 625 [illegible]

Bai Rajbai, I.L.R. 39 Bom. 625 P.C. p.646. In this case, it appears that the appellant's ancestor preferred a claim to the inam before the Inam Commission set up by Government to adjudicate upon such claims. A sanad was issued in 1884: the sanad is not among the papers but it appears from the District Deputy Collector's order that it was in form 14 given in Joglekar's Alienation Manual. It would therefore appear that the claim was not inquired into by the Inam Commission, (See Art.30 of the Manual), and that the inam was actually settled under Bombay Act II of 1863. The sanad granted to the inamdar appears to exclude the assigned sanadi lands, and it is binding upon the granted as it is upon Government and cannot now be reopened. Moreover, the exclusion of the sanadi holding from the inam and thier retention by Government is evidenced also by the Allienation Register which, in view of section 53, Bombay Land Revenue Code, 1879, has great probative value. It is further corroborated by the conduct of the parties. The sanadis were actually appointed by the Collector. The holdings have been under attachment since 1911 and the appellant himself has paid full assessment. It is clear therefore that the sanadi holding did not form part of the inam as continued to the inamdar by the British Government, and that the appellant can have no claim thereto. In any case by his conduct, the Inamdar would also appear to be estopped from claiming the lands as judid for reasons which are fully referred to in Secy of State vs. Rajaram 36 Bom L.R. at p. 1055.

This does not appear to be correct. This appears to have been settled under the Goldon Settlement (See Sanad No 14 at p. 266 of Phadnis Watan Act) the instructions of D.S. I have asked the Asstt. Govt. pleader not to make such a statement without seeing the Sanad which the other side is likely to produce.

S/f R.T.K. 4/10.

5. Finally, it should be pointed out that such claim as he might have had is barred by limitation. A suit for declaration would be governed by Art. 120 of Schedule I to the Limitation Act, 1908, and the right to sue must be deemed to have accrued to the appellant in 1884 when the holding was excluded from the sanad, or

the sanad, or at any any rate in 1911 when it was placed under attachment. See Kodoth Ambu Nair v. Secretary of State I.L.R. 47 Mad. 572 P.C. at [illegible] 584-5. Although the limitation Act does not apply to these proceedings, the Tribunal bases its decisisions upon a consideration of the law of the land, and will not overlook the fact that the appellant's claim, if it were to be agitated in a civil Court, would be barred. It is equally pertinent to emphasise laches and acquiescence on the part of the inamdar.

6. For these reasons, (it) should be urged that the appeal should be dismissed.

7. The R.D. is being requested to forward copies of the following documents to the Assistant Government Pleader, High Court:

(1) Ofder of the District Deputy Collector dated 28-9-1940.

(2) Order of the Collector dated 21-7-1941.

(3) Appeal Memo.

(4) Extract from the Inam Registrar, page 71, file II.

(5) Extract from the statement of Chandrappa, page 10, file III.

(6) Translation of the Jamabandi Chitta, File III, page 13.

(7) Extract from V. IX File III, page 17.

(8) Extract from the Land Alienation Register, File I, page 99.